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9 UNITED STATES DISTRICT COURT

10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 GIL CROSTHWAITE, et al.,

Case No.: C07-1564 JSW

12 Plaintiffs,

13 v.  
14 **STIPULATION FOR ENTRY OF**  
15 **JUDGMENT**

16 WESTERN TRACTION II, INC., et al.

17 Defendants.

18 On or about December 12, 2006 the parties hereto entered into a Settlement Agreement  
19 and Release of Claims, attached hereto as **Exhibit A**, and incorporated herein. The terms of this  
20 Stipulation shall control in the event of any conflict with that Agreement.

21 1. The above referenced Agreement provided for monthly payments to be made by Defendant  
22 to Plaintiffs, to pay for delinquent employee benefit contributions for the period August 1, 2003  
23 through July 31, 2006, and other amounts incurred thereon. Defendant failed to make all of the  
24 agreed monthly payments, and further failed to “remain current on all fringe benefit contributions”  
25 for the period from July 2006 through February, 2007, as provided in the Agreement. The within  
26 action was therefore filed on March 19, 2007.

27 ///

28

1           2. On September 12, 2007, mediation in this action resulted in the following agreement:

2           A. Under the terms of Exhibit A hereto, 10 payments of \$11,000.00 each, plus one  
3           payment of \$5,081.22 remain to be paid for contributions and presettlement interest  
4           only, all totaling \$115,081.22.

5

6           • Defendant shall make nine (9) payments of **\$11,000.00**, to be received on or  
7           before the **20<sup>th</sup> days of September through November, 2007, and March**  
8           **through August, 2008**. Defendant shall make three (3) payments of  
9           **\$6,000.00** to Plaintiffs on or before the **20<sup>th</sup> days of December, 2007 through**  
10           **February, 2008**. The payment of \$1,918.78 in excess of the \$115,081.22  
11           owed for the August 20, 2008 payment shall be applied to amounts due under  
12           paragraph B below.

13           B. As shown on **Exhibit B** hereto, the parties agree that Defendant owes the amount of  
14           **\$131,341.60** to Plaintiffs for unpaid contributions for August, 2006 through February,  
15           2007, and April, 2007. After applying the excess \$1,918.78 from above paragraph 2A,  
16           the balance of \$129,422.82 shall be paid as follows:

17

18           • Beginning **September 14, 2007**, Defendant shall make 26 weekly payments to  
19           Plaintiffs in the sum of **\$5,000.00**, on or before **every Friday** of September  
20           through November and of April through July of every year until the above  
21           contributions are paid in full. The payment of the excess of the balance in the  
22           last of these payments shall be applied to amounts due under Paragraph C  
23           below.

24           C. The remaining amounts totaling \$62,236.39 plus interest as provided in paragraph D  
25           below, shall be paid by Defendant as follows:

26

27           • Beginning **September 20, 2008 through November, 2008**, and in **March**  
28           **2009 through November, 2009**, and for those months each year thereafter  
         until paid in full, Defendant shall continue to make monthly payments of  
         **\$11,000.00**. Defendant shall make monthly payments of **\$6,000.00** from  
         **December, 2008 through February, 2009**, and for those months each year  
         thereafter until paid in full, each to be received on or before the **20<sup>th</sup>** of each  
         month, until the following agreed amounts, and those under paragraph D  
         below, are paid in full:

29           1.           Interest incurred on default of prior Settlement:       \$16,644.69

1	2.	Interest incurred on unpaid contributions for 8/06-2/07 and 4/07 (to 9/15/07): 15,811.47	
2	3.	Audit for period 8/02-3/07: Contributions, \$10,691.98 Interest, 5,936.49 Mistaken payments, (4,291.81) Audit fees (half) 5,443.57	17,780.23
3	4.	Attorneys fees as agreed (through 9/14/07): 12,000.00	
5			
6			<b>TOTAL:</b> \$62,236.39
7			

8 D. Interest shall accrue at the rate of 12% per annum on the unpaid balances of amounts  
 9 shown in sections A and B above, but that interest shall not reduce the application of  
 10 amounts paid under the terms of paragraphs 2A and B above. Rather, the accrued  
 11 interest shall be paid as continued payments under paragraph C above. Any late paid  
 12 contributions and liquidated damages incurred under the terms of paragraph F below,  
 13 and any additional amounts incurred under the terms herein, shall be paid by continuing  
 14 monthly payments of \$11,000 from March through November and of \$6,000 from  
 15 December through February of each year until all amounts due are paid to Plaintiffs in  
 16 full. Plaintiffs shall advise Defendant in writing prior to the final payment, of the  
 17 additional amounts accrued hereunder, to be paid by Defendants.  
 18

20 E. Defendant shall make payments described in paragraphs A through D above to the  
 21 “*Operating Engineers Local Union No. 3 Trust Funds*” and deliver them to Saltzman &  
 22 Johnson Law Corporation, Attention: Muriel B. Kaplan, Esq., 120 Howard Street, Suite  
 23 520, San Francisco, CA 94105 or to such other address as may be specified by  
 24 plaintiffs. Those payments shall be received by Saltzman & Johnson *on or before* their  
 25 due dates of each Friday (\$5,000.00) and the 20th days of each month (\$11,000.00 and  
 26 \$6,000), summarized as follows:  
 27  
 28

1 | //

9/14/07-11/07: \$5,000 weekly, \$11,000.00 monthly  
12/07-2/08: \$6,000.00 monthly  
3/08 \$11,000.00  
4/14/08-11/08 \$5,000 weekly, (until 6/11/08) \$11,000.00 monthly  
12/08-2/09 \$6,000.00 monthly (same period annually), and  
3/09-11/09 \$11,000.00 monthly, (same period annually),  
until all amounts herein are paid

7 F. Beginning with contributions due for hours worked by defendant's employees during  
8 the month of August, 2007, to be received by the Plaintiff Trust Funds no later than  
9 September 15, 2007, and for every month thereafter until this stipulation is satisfied,  
10 defendant shall remain current in contributions due to plaintiffs under the current  
11 Collective Bargaining Agreement and under all subsequent collective bargaining  
12 agreements, if any, and the Declarations of Trust as amended. **Defendants shall fax a**  
13 **copy of the contribution report for each month, together with a copy of that**  
14 **payment check, to Muriel B. Kaplan at 415-882-9287, on the same day they send**  
15 **the payment to the Trust Fund.**

17 G. Any unpaid or late paid contributions, together with 15% liquidated damages and 12%  
18  
19 per cent per annum interest accrued on the total contributions and liquidated damages,  
20 shall be added to and become a part of Defendant's debt to Plaintiffs, and subject to the  
21 terms herein. Plaintiffs reserve all rights available under the applicable Bargaining  
22 Agreement and Declarations of Trust of the Trust Funds for collection of current and  
23 future contributions and the provisions of this Stipulation are in addition thereto.

25 H. Upon entry of this Stipulation, Plaintiffs shall dismiss this action *with prejudice* as to  
26 Ron Carlston, Jr. individually, and dismiss *without prejudice* as to Western Traction II,

20 *III.*

1 Inc., subject to the terms of paragraph 3(b) below, for which the court shall retain  
2 jurisdiction.  
3

4 3. Failure by Defendant to fax and remain current in its contributions, or failure to make any  
5 payment required in sections A through G above, shall constitute a default of the obligations under  
6 this agreement. Plaintiffs shall provide notice of such default directly to Western Traction by fax  
7 to 510-683-9826, with a copy to Rodney Sweet, Esq. At 925-284-1613, providing two (2)  
8 business days to confirm payment or cure the default. Failure by defendants to do so shall result  
9 in the following:  
10

11 (a) The entire balances shown in sections 2A through G above, plus interest, reduced by  
12 principal payments received by Plaintiffs, but increased by liquidated damages of  
13 \$113,328.83 (\$84,128.58 under Exhibit A, plus \$22,755.52 for 8/06-2/07  
14 delinquencies, plus \$6,444.73 on audit) and any unpaid contributions then due, plus  
15 15% liquidated damages and 12% per cent per annum interest thereon as provided in  
16 above section G, shall be immediately due, together with any additional attorneys' fees  
17 and costs under section (e) below.  
18

19 (b) Plaintiffs may reopen this case for the purpose of entering judgment, upon the filing of  
20 a declaration of a duly authorized representative of the plaintiffs stating that default has  
21 occurred hereunder. Judgment may be entered for the entire balance remaining due  
22 under the terms herein, less principal payments received by plaintiffs.  
23

24 (c) A writ of execution may be obtained against Defendant without further notice, in the  
25 amount of the unpaid balance, plus any additional amounts under the terms herein,  
26 upon declaration of a duly authorized representative of the plaintiffs setting forth any  
27 payment theretofore made by or on behalf of defendant and the balance due and owing  
28

1 as of the date of default. Defendant specifically consents to the authority of a  
2 Magistrate Judge for all proceedings, including, but not limited to, plaintiffs' obtaining  
3 a writ of execution herein.

4

5 (d) Defendant waives notice of entry of judgment and expressly waives all rights to stay  
6 of execution and appeal. The declaration or affidavit of a duly authorized  
7 representative of Plaintiffs as to the balance due and owing as of the date of default  
8 shall be sufficient to secure the issuance of a writ of execution.

9

10 (e) Defendant shall pay all additional costs and attorneys' fees incurred by plaintiffs in  
11 connection with collection of the amounts owed by defendant to plaintiffs under this  
12 Stipulation.

13

14 (f) Any check not timely submitted or submitted by defendant which fails to clear the  
15 bank, or is unable to be negotiated for any reason, shall be considered to be a default of  
16 this Stipulation. In that event, such payment shall be replaced by Defendant with a  
17 cashier's check.

18

19 4. Any failure on the part of the plaintiffs to take any action against defendant as provided  
20 herein in the event of any breach of the provisions of this Stipulation shall not be deemed a waiver  
21 of any subsequent breach by the defendant of any provisions herein.

22

23 5. This Stipulation may be executed in counterparts, each one of which shall be deemed to be  
24 an original and all of which together shall constitute one single agreement between the parties  
25 hereto. Faxed signatures shall be deemed originals.

26

27 Dated: December 20, 2007

28 WESTERN TRACTION, INC.

1  
2 Dated: December 26, 2007  
3

By: R.C.  
Ron Carlson, Jr., President  
RON CARLSON, JR., Individually  
Ron Carlson, Jr., Individually

5 Dated: December 26, 2007  
6

OPERATING ENGINEERS LOCAL UNION NO. 3  
TRUST FUNDS

7  
8 By: Wayne McBride  
Wayne McBride, Collections Manager  
9

10 APPROVED AS TO FORM:

11 Dated: December 20, 2007  
12

13 SWEET & KLEINMAN  
14 By: Rodney Sweet  
Rodney Sweet, Attorney for Defendants  
15

16 Dated: December 20, 2007  
17

SALTZMAN & JOHNSON LAW CORPORATION

18 By: Muriel B. Kaplan  
Muriel B. Kaplan  
Attorneys for Plaintiffs  
19

IT IS SO ORDERED.

20 Dated: January 2, 2008  
21

22 Jeffrey S. White  
23 UNITED STATES DISTRICT COURT JUDGE  
24  
25  
26  
27  
28